



GOV. MSG. NO. 620

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 3, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 3, 2010, the following bill was signed into law:

SB2472 SD2 HD1 CD1

A BILL FOR AN ACT
RELATING TO MORTGAGE FORECLOSURES.
ACT 162 (10)

Sincerely,



LINDA LINGLE

Approved by the Governor

on JUN 3 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

ACT 162
S.B. NO. 2472
S.D. 2
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the number of
2 mortgage foreclosures of residential property has reached an
3 alarming level. The legislature acknowledges that this
4 situation is not unique to Hawaii and is part of a nationwide
5 economic downturn and resulting upheaval throughout the home
6 lending industry. Because of these concerns, there have been
7 numerous measures proposed during the 2010 legislative session
8 to address foreclosure-related issues. However, it is unclear
9 whether any of these approaches will improve the conditions
10 relating to foreclosures or improve the current foreclosure
11 laws.

12 The legislature further finds that a comprehensive
13 evaluation of Hawaii's mortgage foreclosure laws is necessary
14 before the enactment of meaningful legislation that, on balance,
15 addresses the concerns of both borrowers and lenders involved in
16 mortgage foreclosures without further overburdening the courts.

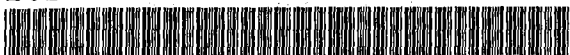
17 The purpose of this Act is to create a mortgage foreclosure
18 task force to conduct an extensive analysis of all factors



1 affecting mortgage foreclosures in the state and to recommend
2 appropriate legislation.

3 SECTION 2. (a) There is established a mortgage
4 foreclosure task force within the department of commerce and
5 consumer affairs for administrative purposes. The director of
6 commerce and consumer affairs shall select the initial members
7 of the task force and shall invite at least one member from each
8 of the following:

- 9 (1) The department of commerce and consumer affairs'
10 office of consumer protection;
- 11 (2) A mortgage counseling organization approved by the
12 United States Department of Housing and Urban
13 Development, preferably with expertise in consumer
14 credit counseling;
- 15 (3) The Legal Aid Society of Hawaii;
- 16 (4) The Hawaii Financial Services Association;
- 17 (5) The Hawaii Bankers Association;
- 18 (6) The Mortgage Bankers Association of Hawaii;
- 19 (7) The Hawaii Credit Union League;
- 20 (8) The Hawaii Council of Associations of Apartment
21 Owners;



1 (9) The Hawaii State Bar Association Collection Law
2 Section;

3 (10) The Hawaii State Bar Association Bankruptcy Law
4 Section or the Bankruptcy Court of the United States
5 District of Hawaii; and

6 (11) The Hawaii state judiciary.

7 The members of the mortgage foreclosure task force shall elect a
8 chairperson from among its membership. The chairperson of the
9 task force shall seek to maintain a balanced representation of
10 interests and may select additional task force members at the
11 chairperson's discretion.

12 (b) The mortgage foreclosure task force shall undertake a
13 study to develop both general and specific policies and
14 procedures necessary to improve the manner in which mortgage
15 foreclosures are conducted in the state. In particular, the
16 task force shall consider the following areas for possible
17 improvements:

18 (1) The adequacy of notice given to mortgagors of
19 available mortgage counseling programs and the optimal
20 timing for such notification and counseling;



- 1 (2) The availability of loan documentation to mortgagors
- 2 from mortgagees prior to and during the foreclosure
- 3 process;
- 4 (3) The establishment of statutory bidding thresholds for
- 5 properties sold via foreclosure;
- 6 (4) The statutory timeline for power-of-sale foreclosures;
- 7 (5) Further regulation of distressed property consultants;
- 8 and
- 9 (6) Revisions to part II of chapter 667, Hawaii Revised
- 10 Statutes, to make it a viable vehicle for power-of-
- 11 sale foreclosures.
- 12 (c) In undertaking the study, the mortgage foreclosure
- 13 task force may take into account any of the following factors:
- 14 (1) Existing regulation, on both the state and federal
- 15 levels;
- 16 (2) The state of the national and local economy, mortgage
- 17 loan default rates, and unemployment rates;
- 18 (3) Local borrowing and lending practices vis-à-vis
- 19 mainland practices;
- 20 (4) Standard mortgage loan qualifications;
- 21 (5) Language barriers and other cultural factors unique to
- 22 this state;



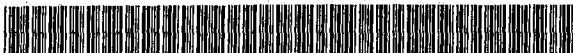
- 1 (6) The extent to which predatory mortgage lending, abuse
2 of collection procedures, and otherwise unfair,
3 fraudulent, and deceptive practices have impacted
4 mortgagors;
- 5 (7) The effect of various mortgage loan terms, interest
6 rates, fees, risk-based pricing, single-premium credit
7 insurance, financing, and payment structures;
- 8 (8) The extent to which mortgage loan terms and conditions
9 are disclosed to and understood by borrowers;
- 10 (9) A borrower's ability to negotiate mortgage loan terms
11 and prices;
- 12 (10) The role of mortgage servicing agents and their
13 practices;
- 14 (11) The availability, consumer knowledge, and use of
15 mortgage counseling;
- 16 (12) The availability, consumer knowledge, and use of loan
17 modification processes;
- 18 (13) The length of time and expense associated with
19 completing the foreclosure process;
- 20 (14) The extent to which mortgagees provide mortgagors with
21 mortgage documents when requested;



- 1 (15) The impact on the state's judicial system and the
- 2 timely resolution of foreclosure disputes;
- 3 (16) The extent to which mortgage foreclosures go
- 4 uncontested;
- 5 (17) The proof required to establish standing for
- 6 foreclosing mortgagees;
- 7 (18) Association and maintenance fees and other costs borne
- 8 by neighbor unit holders in condominium or community
- 9 associations when mortgagors are in default;
- 10 (19) Abuses of the existing law by mortgagors and
- 11 mortgagees;
- 12 (20) The effect of certain inefficiencies and barriers
- 13 under the current law relating to foreclosures, such
- 14 as serving process upon absent or deceased mortgagors;
- 15 and
- 16 (21) The extent to which the above factors impact power-of-
- 17 sale vis-à-vis judicial foreclosures.
- 18 (d) The mortgage foreclosure task force shall analyze the
- 19 effectiveness and any defects of the foreclosure procedures
- 20 currently set in statute for both judicial and power-of-sale
- 21 foreclosures. In this analysis, the task force:



- 1 (1) May consider and recommend alternative procedures for
2 timeshare property;
- 3 (2) May consider and recommend alternative procedures for
4 foreclosures sought by junior lien holders such as
5 condominiums, co-op apartments, and community
6 associations collecting maintenance fees;
- 7 (3) May propose measures to clarify the application of
8 chapter 667, Hawaii Revised Statutes, to other
9 property statutes;
- 10 (4) Shall comment on the extent to which existing law does
11 or does not comply with state and federal
12 constitutional due process guarantees;
- 13 (5) Shall comment on any effect proposed legislative
14 changes will have on borrowers who are current on
15 their mortgage loans; and
- 16 (6) Shall seek to maintain and not erode existing consumer
17 protections.
- 18 (e) The mortgage foreclosure task force shall comment on
19 the feasibility of establishing a state entity or administrator
20 to focus on addressing the concerns of mortgagors, disseminating
21 information, and otherwise engaging in consumer education. The



1 task force shall propose funding mechanisms to enable the
2 operation of this entity.

3 (f) Members of the mortgage foreclosure task force shall
4 serve without compensation and shall not be reimbursed for
5 expenses.

6 (g) The mortgage foreclosure task force shall submit a
7 report of its findings and recommendations, including any
8 proposed legislation, to the legislature no later than twenty
9 days prior to the convening of the 2011 and 2012 regular
10 sessions, and shall participate in a joint informational session
11 upon request of the legislature.

12 (h) The legislative reference bureau shall assist the task
13 force in preparing its findings, recommendations, and proposed
14 legislation; provided that the chairperson of the task force
15 shall submit the task force's proposals to the legislative
16 reference bureau for drafting no later than November 1, 2010 for
17 the report to the 2011 regular session and no later than
18 November 1, 2011, for the report to the 2012 regular session.

19 (i) The mortgage foreclosure task force shall cease to
20 exist on June 30, 2012.

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1 SECTION 3. This Act shall take effect upon its approval.

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APPROVED this 3 day of JUN, 2010


GOVERNOR OF THE STATE OF HAWAII